



AMERICAN BENEFITS  
COUNCIL

June 5, 2009

PROPOSED MODIFICATION OF H.R. 1988,  
THE CONFLICTED INVESTMENT ADVICE PROHIBITION ACT OF 2009

As discussed in the Findings section of the bill, H.R. 1988 is intended to prohibit conflicted advice. As discussed more fully in the American Benefits Council comments on H.R. 1988, the bill would inadvertently prohibit a significant amount of investment advice that is not conflicted. The bill would also prohibit investment advice arrangements that have been specifically reviewed by the Department of Labor and have been found to be in the interests of participants and protective of their rights.

H.R. 1988 is easily modified to achieve its intended purpose through a very simple amendment. Under such amendment, the following would be inserted on page 23 between lines 12 and 13:

“(E) This paragraph shall not apply to investment advice provided to a plan or to a participant or beneficiary if such advice—

(i) is provided under an arrangement that does not involve a conflict of interest described in section 406(b), as determined under the law in effect immediately prior to the enactment of the Pension Protection Act of 2006, or

(ii) is provided under an arrangement that the Secretary has determined is in the interests of participants and beneficiaries, and is protective of the rights of participants and beneficiaries.

The Secretary is directed to prescribe rules requiring such reporting and disclosure as the Secretary considers appropriate with respect to investment advice arrangements permitted by reason of this subparagraph”.

This amendment focuses the bill on conflicted advice. The amendment also directs the Secretary to require appropriate reporting and disclosure with respect to investment advice arrangements that are permitted by reason of the amendment.